

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014040246

ORDER FOLLOWING PREHEARING
CONFERENCE AND ORDER
DENYING DISTRICT'S MOTION TO
DISMISS

On April 28, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Stella L. Owens-Murrell, Office of Administrative Hearings. Surisa Rivers and Shawna Parks, Attorneys at Law, appeared on behalf of Student. Donald Erwin, Attorney at Law, appeared on behalf of District. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on May 6-8, 2014, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ at the Office of Administrative Hearings located at 15350 Sherman Way, Suite 300, Van Nuys, CA 91406. The hearing shall begin each day at 9:30 a.m. and end at 4:30 p.m., unless otherwise ordered.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issue: Whether District may discipline Student if a prior determination has been made by District that the conduct giving rise to the discipline was a manifestation of Student's disability?

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties represent that they have served their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7).

At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer by May 1, 2014 as to the schedule of witnesses if necessary. The parties are also encouraged to enter into Stipulations to pertinent facts, contentions or resolutions. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

Student has identified four witnesses to be called at the hearing. District has identified six witnesses. Two of the witnesses are listed by both parties. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination.

6. Telephonic Testimony. At present neither party anticipates the need for telephonic testimony

7. Motions. District's motion to dismiss the complaint for lack of jurisdiction is denied. Expulsion proceedings are governed by their own statutes (Ed. Code, § 48900. et seq.), and OAH does not have jurisdiction over expulsion proceedings. However, the complaint appears to raise and allege a violation of Student's rights under the IDEA, specifically 20 United States Code section 1415 (k)(1)(E). OAH has jurisdiction to hear and decide those claims. Accordingly, the matter will proceed to hearing on Student's IDEA claim only.

At present no other prehearing motions are pending Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of April 28, 2014.

8. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

9. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

10. Hearing Closed To the Public.

11. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

12. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: April 27, 2014

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings